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Counsel for the Lead Plaintiff Alameda County Employees' Retirement Association and Lead Counsel for the Class

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

PAUL HAYDEN, et al.,

Plaintiffs,

v.

PORTOLA PHARMACEUTICALS INC., et al.,

Defendants.

No. 3:20-cv-00367-VC

CLASS ACTION

LEAD COUNSEL'S NOTICE OF MOTION AND MOTION FOR: (I) ATTORNEYS' FEES, (II) REIMBURSEMENT OF EXPENSES, AND (III) AWARD OF COSTS AND EXPENSES TO PLAINTIFFS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: March 2, 2023
Time: 10:00 a.m.
Dept.: 4 – 17th Floor
Judge: Hon. Vince Chhabria

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TABLE OF AUTHORITIES

Cases

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KEY DEFINED TERMS

PARTIES AND COUNSEL

Lead Plaintiff or ACERA	Lead Plaintiff Alameda County Employees' Retirement Association
OFPRS	Additional Named Plaintiff Oklahoma Firefighters Pension and Retirement System
Plaintiffs	Collectively, Lead Plaintiff and OFPRS
Lead Counsel	Berman Tabacco
OFPRS' Counsel	Saxena White P.A.
Plaintiffs' Counsel	Collectively, Lead Counsel and OFPRS' Counsel
Portola	Portola Pharmaceuticals, Inc.
Officer Defendants	Defendants Scott Garland, Mardi Dier, and Sheldon Koenig
Director Defendants	Defendants Hollings C. Renton, Jeffrey W. Bird, Laura Brege, Dennis Fenton, John H. Johnson, David C. Stump, and H. Ward Wolff
Portola Defendants	Collectively, Portola, Officer Defendants, and Director Defendants
Underwriter Defendants	Defendants Goldman Sachs & Co. LLC; Citigroup Global Markets Inc.; Cowen and Company, LLC; William Blair & Company, L.L.C.; and Oppenheimer & Co. Inc.
Defendants	Collectively, Portola Defendants and Underwriter Defendants
Defendants' Counsel	Paul, Weiss, Rifkind, Wharton & Garrison LLP for Portola Defendants; Morrison & Foerster LLP for Underwriter Defendants

OTHER TERMS

ASC 606	Accounting Standards Codification, Topic 606, Revenue from Contracts with Customer
Claims Administrator or Epiq	Court-appointed Claims Administrator, Epiq Class Action and Claims Solutions, Inc.
Exchange Act	Securities Exchange Act of 1934, 15 U.S.C. § 78a, et seq.
GAAP	Generally Accepted Accounting Principles
N.D. Cal. Guidance	Northern District's Procedural Guidance for Class Action Settlements (last modified Aug. 4, 2022), https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/.

PSLRA	Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4 and 15 U.S.C. § 77z-1
Rule	Federal Rules of Civil Procedure
Secondary Public Offering	Portola's Secondary Public Offering on or about August 14, 2019
Securities Act	Securities Act of 1933, 15 U.S.C. § 77a, et seq.
Settlement Class Period or Class Period	January 8, 2019 through February 28, 2020, inclusive.

KEY DOCUMENTS IN CHRONOLOGICAL ORDER

LP/LC Order	Order Granting Motion to Appoint Lead Plaintiff and Lead Counsel, Vacating Hearing, and Setting Briefing Schedule for Amended Pleadings, entered **April 22, 2020 (ECF No. 49)**[1]
Consolidated Complaint or CC	Consolidated Complaint for Violations of the Securities Laws, filed **May 20, 2020 (ECF No. 51)**
MTD CC Tr.	Transcript of Zoom Webinar Proceedings of the Official Electronic Sound Recording 11:19 – 12:30 p.m. for the Hearing on Defendants' Motion to Dismiss the Consolidated Complaint held on **September 24, 2020 (ECF No. 83)**
FAC	First Amended Complaint for Violations of the Securities Laws, filed **November 5, 2020 (ECF No. 87)**
SAC	Second Amended Complaint for Violations of the Securities Laws, filed **March 31, 2021 (ECF No. 113)**
MTD SAC or Motion to Dismiss the SAC	Notice of Motion and Motion to Dismiss the Second Amended Consolidated Class Action Complaint: Memorandum of Points and Authorities in Support Thereof, filed **May 5, 2021 (ECF No. 119)**
MTD SAC Opp.	Lead Plaintiff's Opposition to Defendants' Motion to Dismiss The Second Amended Consolidated Class Action Complaint, filed **June 9, 2021 (ECF No. 121)**
MTD SAC Order	Order Granting in Part and Denying in Part Defendants' Motion to Dismiss Second Amended Consolidated Class Action Complaint, filed **August 10, 2021 (ECF No. 143)**
Joint CMC Statement	Joint Case Management Statement and [Proposed] Order, filed **August 25, 2021 (ECF No. 146)**
TAC	Third Amended Complaint for Violations of the Securities Laws, filed **August 31, 2021 (ECF No. 149)**

[1] References throughout to "ECF No. __" are to the above-captioned case docket, unless otherwise specified.

MTD TAC or Motion to Dismiss the TAC	Notice of Motion and Motion to Dismiss the Third Amended Consolidated Class Action Complaint; Memorandum of Points and Authorities in Support Thereof, filed **September 21, 2021 (ECF No. 163)**
MTD TAC Opp.	Lead Plaintiff's Opposition to Defendants' Motion to Dismiss the Third Amended Consolidated Class Action Complaint, filed **October 12, 2021 (ECF No. 165)**
MTD TAC Reply	Reply Memorandum of Points and Authorities in Further Support of Motion to Dismiss the Third Amended Consolidated Class Action Complaint, filed **October 26, 2021 (ECF No. 169)**
MTD TAC Tr.	Transcript of Zoom Webinar Proceedings of the Official Electronic Sound Recording 10:23 – 10:51 a.m. for the Hearing on Defendants' Motion to Dismiss the Third Amended Consolidated held on **January 20, 2022 (ECF No. 185)**
Motion for Class Cert. or Certification	Lead Plaintiff's Notice of Motion and Motion for Class Certification; Memorandum of Points and Authorities in Support Thereof, filed **February 17, 2022 (ECF No. 190)**
Class Cert. Opp.	Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for Class Certification, filed **April 25, 2022 (ECF No. 202)**
Class Cert. Reply	Lead Plaintiff's Reply in Support of Motion for Class Certification, filed **June 2, 2022 (ECF No. 217)**
Preliminary Approval Motion	Lead Plaintiff's Notice of Motion and Motion For Preliminary Approval of Proposed Class Action Settlement; Memorandum of Points And Authorities In Support Thereof, filed **September 19, 2022 (ECF No. 231)**
Preliminary Approval Order	Order Preliminarily Approving Settlement and Providing For Notice, entered **October 31, 2022 (ECF No. 242)**
Stipulation, Settlement, or Stipulation of Settlement	Stipulation and Agreement of Settlement, filed **September 19, 2022 (Exhibit A to the Preliminary Approval Order (ECF No. 231-2))**
Final Approval Motion or Mot.	Lead Plaintiff's Notice of Motion and Motion For: (I) Final Approval of Proposed Class Action Settlement, (II) Final Certification of The Settlement Class, and (III) Final Approval of Proposed Plan of Allocation; Memorandum of Points and Authorities In Support Thereof
Fee and Expense Motion or Mot.	Lead Counsel's Notice of Motion and Motion for: (I) Attorneys' Fees, (II) Reimbursement of Expenses, and (III) Award of Costs and Expenses to Plaintiffs; Memorandum of Points and Authorities in Support Thereof
Barenbaum Declaration or Barenbaum Decl.	Declaration of Daniel E. Barenbaum In Support Lead Plaintiff's Motion For Final Approval of Proposed Class Action Settlement and Lead Counsel's Motion For Attorneys' Fees, Reimbursement of Expenses, and Award of Costs and Expenses To Plaintiffs

EXHIBITS TO THE DECLARATION OF DANIEL E. BARENBAUM[2]

Exhibit 1	Summary Table of the Hours and Lodestar of Berman Tabacco
Exhibit 2	Summary Table of the Hours of Berman Tabacco by Category
Exhibit 3	Summary Table of the Expenses of Berman Tabacco
Exhibit 4	Berman Tabacco Firm Resume
Exhibit 5	Declaration of Susan Weiss on Behalf of Lead Plaintiff Alameda County Employees' Retirement Association In Support of Lead Plaintiff's Notice of Motion And Motion For: (I) Final Approval of Proposed Class Action Settlement, (II) Final Certification of The Settlement Class, and (III) Final Approval of Proposed Plan of Allocation and Lead Counsel's Motion For Attorneys' Fees, Reimbursement of Expenses, and Award of Costs And Expenses To Plaintiffs **("Weiss Declaration" or "Weiss Decl.")**
Exhibit 6	Saxena White P.A. Firm Resume
Exhibit 7	Declaration of David R. Kaplan on Behalf of Saxena White P.A. In Support of Lead Plaintiff's Notice of Motion and Motion For: (I) Final Approval of Proposed Class Action Settlement, (II) Final Certification of The Settlement Class, and (III) Final Approval of Proposed Plan of Allocation and Lead Counsel's Motion For Attorneys' Fees, Reimbursement of Expenses, and Award of Costs And Expenses To Plaintiffs **("Kaplan Declaration" or "Kaplan Decl.")**
Exhibit 8	Declaration of Chase Rankin on Behalf of Additional Named Plaintiff Oklahoma Firefighters Pension and Retirement System In Support of Lead Plaintiff's Notice of Motion and Motion For: (I) Final Approval of Proposed Class Action Settlement, (II) Final Certification of The Settlement Class, and (III) Final Approval of Proposed Plan of Allocation and Lead Counsel's Motion For (I) Attorneys' Fees, (II) Reimbursement of Expenses, and (III) Award of Costs and Expenses to Plaintiffs **("Rankin Declaration" or "Rankin Decl.")**
Exhibit 9	Declaration of Eric Blow Regarding Dissemination and Publication of Settlement Notice **("Blow Notice Declaration" or "Blow Notice Decl.")**
Exhibit 10	True and correct excerpted pages from Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review*, NERA Economic Consulting (Jan. 25, 2022)

[2] True and correct copies of all Exhibits are attached to the Barenbaum Declaration. All references to **Exhibit** or **Ex.** refer to the exhibits attached to the Barenbaum Declaration.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should award the attorneys' fees requested by Lead Counsel on behalf of Plaintiffs' Counsel.[3]

2. Whether the Court should reimburse the requested litigation expenses incurred by Plaintiffs' Counsel.

3. Whether the Court should grant the requested award of costs and expenses to Plaintiffs related to their representation of the Settlement Class.

[3] All capitalized terms not otherwise defined herein have the same meaning as set forth in the September 19, 2022 Stipulation of Settlement. Unless otherwise indicated, all emphasis is added and all alterations, internal quotation marks, and citations (with limited exceptions) are omitted.

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on March 2, 2023, at 10:00 a.m., via Zoom Webinar ID: 161 285 7657, Password: 547298, pursuant to Rule 23(h) and the Court's Preliminary Approval Order, Lead Counsel Berman Tabacco—on behalf of itself, counsel for additional named plaintiff OFPRS, and Plaintiffs—will move this Court for an order: (i) awarding attorneys' fees of 25% of the Settlement Fund ($4,375,000), plus interest; (ii) awarding reimbursement of litigation expenses in the amount of $750,612.54, plus interest; and (iii) awarding Plaintiffs, pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), the reimbursement of reasonable costs and expenses related to their representation of the Settlement Class in the aggregate amount of $18,500.

This motion is based on the following memorandum of points and authorities; the accompanying Barenbaum Declaration and the exhibits attached thereto, Lead Plaintiff's Final Approval Motion, the Stipulation of Settlement; all pleadings and records filed herewith; and such oral and documentary evidence as may be presented at the hearing of this motion.[4]T

Defendants support the Settlement and take no position on this motion. Barenbaum Decl. ¶¶.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs and Defendants have achieved an excellent proposed Settlement of this action for $17.5 million in cash for the benefit of the Settlement Class in consideration for resolving all claims alleged. Lead Counsel for the Court-appointed Lead Plaintiff and the proposed

[4] Lead Counsel respectfully refers the Court to the Final Approval Motion and the Barenbaum Declaration for a detailed description of, inter alia: the history of this action (Final Approval Motion §§ I-II; Barenbaum Decl. ¶¶23-40); the nature of the claims asserted (Final Approval Motion § II; Barenbaum Decl. ¶¶17-22), the negotiations leading to the Settlement (Final Approval Motion §.III.B.b.; Barenbaum Decl. ¶¶41-48), and the risks and uncertainties of continued litigation (Final Approval Motion §§.III.A.a.-c.; Barenbaum Decl. ¶¶10, 54-67). See N.D. Cal. Guidance at 4 ("If the plaintiffs choose to file two separate motions, they should not repeat the case history and background facts in both motions. The motion for attorneys' fees should refer to the history and facts set out in the motion for final approval.").

Settlement Class respectfully submits this memorandum of points and authorities in support of its motion for and order (i) awarding attorneys' fees in the amount of 25% of the Settlement Fund, or $4,375,000, plus interest; (ii) awarding reimbursement of litigation expenses in the amount of $750,612.54, plus interest, which were reasonably and necessarily incurred by Plaintiffs' Counsel in prosecuting and resolving this action; and (iii) awarding Plaintiffs, pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), the reimbursement of reasonable costs and expenses in the aggregate of $18,500 ($10,000 for ACERA and $8,500 for OFPRS) for their representation of the Settlement Class throughout the course of this litigation.

As detailed in the accompanying Barenbaum Declaration, Plaintiffs and Plaintiffs' Counsel secured the Settlement due to their vigorous efforts over the course of two-plus years of hard-fought litigation and their thorough understanding of the strengths and weaknesses of the claims and defenses in the action. Barenbaum Decl. ¶¶6-11, 26-48. In undertaking this litigation, Plaintiffs' Counsel faced a litany of challenges to proving both liability and damages—challenges that posed the serious risk Plaintiffs collecting a substantially smaller recovery or no recovery at all. As discussed below and detailed in the accompanying Barenbaum Declaration, the Settlement represents an excellent outcome for the Settlement Class and provides meaningful relief to Settlement Class Members while avoiding the substantial risks and delay of continued litigation, including many significant remaining hurdles that Plaintiffs would have to overcome where, if unsuccessful, may have resulted in the Settlement Class recovering less than the Settlement amount or nothing at all, even after trial and appeals. Id. ¶¶10, 54-67. The proposed Settlement recovery of $17.5 million here represents approximately 5.8% of those estimated maximum alleged damages, which is in line with recent comparable securities class action settlements and is within the range of recoveries found reasonable by courts in this Circuit and others. Id. ¶53.[5]

[5] The 5.8% is unrealistically low: it assumes that (1) all of the stock drops on the corrective days alleged are associated with correcting the fraud and falsity alleged (see id. ¶52), and (2) Plaintiffs prevail against Defendants on all claims for all alleged damages (see id.)—something that is unlikely given the risks detailed above.

Plaintiffs' Counsel have worked on a contingent basis, without any compensation, to achieve this excellent result. With no guarantee of recovery at the inception of this action, and faced with vigorous opposition by highly skilled defense counsel, Plaintiffs' Counsel devoted the necessary human and monetary resources, as well as time, to achieve a strong result for the Settlement Class. As detailed in the Barenbaum Declaration, Plaintiffs' Counsel have vigorously pursued this litigation and were fully prepared to continue litigating had the Parties not reached the Settlement agreement.[6]

Plaintiffs' Counsel also engaged in hard-fought settlement negotiations with Defendants' counsel, including formal arm's-length negotiations and a full-day mediation session before nationally recognized mediator Robert A. Meyer, Esq. of JAMS, followed by the mediator conducting extensive individual follow-up sessions with counsel. Barenbaum Decl. ¶¶11, 41-44. Moreover, if the Settlement is approved by the Court, Lead Counsel will continue to invest significant time and resources into implementing and overseeing the administration of the Settlement.

The requested fee award is fair and reasonable. Lead Counsel's and OFPRS' Counsel's collective lodestar of $9,653,350.25 ($8,511,421.50 and $1,141,928.75, respectively) is more than double the requested attorneys' fees and, if awarded, results in a steep negative multiplier of Plaintiffs' Counsel's time. Given Plaintiffs' Counsel's efforts, the recovery obtained, the amount and complexity of the work involved during the pendency of the litigation, the skill and

[6] These efforts included, inter alia: (i) interviews with former Portola employees and customers; (ii) extensive consultation with, and analysis by, forensic auditing and damages, accounting, and market efficiency consultants; (iii) detailed review of Portola's public filings, annual reports, press releases, conference call transcripts, and other publicly available information; (iv) the review of analysts' reports and articles relating to Portola; (v) the drafting of a consolidated complaint and three amended complaints; (vi) research of the applicable law with respect to the claims asserted in the four complaints and the potential defenses thereto; (vii) extensive briefing regarding the asserted legal and factual claims, both in opposing Defendants' motions to dismiss each complaint and in preparing a motion for and reply brief in support of class certification; (viii) the review of thousands of documents produced in discovery,[6] including third-party discovery of Plaintiffs' investment managers; and (ix) the taking or defending of seven depositions, including expert depositions, Plaintiffs' depositions, and depositions of Plaintiffs' external investment managers. See, e.g., Barenbaum Decl. ¶9.

expertise required to prosecute and resolve the claims asserted against highly skilled and lauded defense counsel, and the substantial time and risks that Plaintiffs' Counsel undertook in this action, Lead Counsel respectfully submits that its fee request for 25% ($4,375,000) of the Settlement Fund is fair and reasonable in this case under the applicable legal standards, including the Ninth Circuit's "benchmark" award of 25% in common fund cases and comparable Northern District complex securities class action fee awards for settlements.

Importantly, Lead Counsel's fee request is based on an ex-ante fee agreement negotiated by ACERA, a sophisticated institutional investor with experience negotiating fees with counsel and evaluating fee requests. ACERA is the public pension system for Alameda County public employees and retirees and is responsible for managing over $10.5 billion in assets (as of November 30, 2022) for over 25,000 beneficiaries. Having expended significant time overseeing this litigation and Lead Counsel's efforts throughout the litigation, ACERA has endorsed the requested fee as fair and reasonable, as has additional Named Plaintiff OFPRS. **Ex. 5** (Weiss Decl.) ¶¶5, 8 (ACERA); **Ex. 8** (Rankin Decl.) ¶¶7, 10 (OFPRS). Moreover, the reaction of the Settlement Class to date has been entirely positive.

Lead Counsel also submits that the request for reimbursement of litigation expenses of $750,612.54 is reasonable and consistent with those litigation expenses awarded in comparable cases and thus properly recoverable. The incurring of those expenses was necessary to support and bolster the successful prosecution of this case. A breakdown of litigation expenses is detailed in the Barenbaum and Kaplan Declarations. Barenbaum Decl. ¶¶107-15 & **Ex. 3** (Lead Counsel); **Ex. 7** (Kaplan Decl.) ¶¶11-12 & Ex. C, thereto (OFPRS' Counsel). A significant portion of the expenses were for critical consultant/expert fees and expenses; other categories of expenses incurred were those for, inter alia, online factual and legal research expenses, mediation fees, and travel. Barenbaum Decl. ¶¶111-13; **Ex. 7** (Kaplan Decl.) ¶11.

Finally, pursuant to the PSLRA, 15 U.S.C. § 78u-4(a)(4), Lead Counsel seeks an order awarding reimbursement of some of ACERA's and OFPRS' expenses incurred during the litigation. Plaintiffs collectively spent well over 15,431.45 hours assisting Plaintiffs' Counsel in

this action. To reimburse Plaintiffs for their reasonable expenses, Plaintiffs respectfully requests an order awarding an aggregate of $18,500 ($10,000 for ACERA and $8,500 for OFPRS).

That to date no objections have been filed with respect to any aspect of the Settlement—including the requests for attorneys' fees, reimbursement of Plaintiffs' Counsel's litigation expenses, and an award for reimbursement of costs and expenses to Plaintiffs—further supports approval of the requested fees and litigation expenses.[7] Accordingly, Lead Counsel requests that the Court grant its motion for an order awarding fees, Plaintiffs' Counsel's litigation expenses, and the reimbursement of costs and expenses of Plaintiffs.

II. ARGUMENT

A. The Requested Attorneys' Fees are Fair and Reasonable and Should be Approved

It is well-settled that an attorney who pursues a lawsuit that succeeds in the creation of a common fund for the benefit of a class is entitled to receive attorneys' fees from the common fund. See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980); see also Rodriguez v. Disner, 688 F.3d 645, 653 (9th Cir. 2012). This "common fund doctrine" is designed to prevent unjust enrichment so that "those who benefit from the creation of the fund … share the wealth with the lawyers whose skill and effort helped create it." Fleming v. Impax Lab'ys Inc., No. 16-CV-06557-HSG, 2022 WL 2789496, at *7 (N.D. Cal. July 15, 2022) (quoting In re Wash. Pub Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1300 (9th Cir. 1994) ("WPPSS"), aff'd in part sub nom., Class Plaintiffs v. Jaffe & Schlesinger, P.A., 19 F.3d 1306 (9th Cir. 1994)).

Within the Ninth Circuit, although a district court has discretion to award fees in common fund cases based on either the lodestar/multiplier method or the percentage-of-the-fund method, the percentage method has become the prevailing methodology. See Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050 (9th Cir. 2002) (noting "the primary basis of the fee

[7] The deadline for filing of objections is February 9, 2023. Should any objections be filed, Lead Counsel will address them in its reply papers and/or at the hearing for this motion and the motion for final approval of the settlement.

award remains the percentage method"); see also In re ECOtality, Inc. Sec. Litig., No. 13-cv-03791-SC, 2015 WL 5117618, at *3-4 (N.D. Cal. Aug. 28, 2015) (same proposition).[8] The percentage-of-the-fund method is particularly appropriate in PSLRA cases, as utilization of that method is in line with the express language of the statute. See 15 U.S.C. § 78u-4(a)(6) ("Total attorneys' fees and expenses … shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.").

Nevertheless, in employing the percentage-of-the-fund method, courts often perform a lodestar cross-check on the reasonableness of the requested fees. Vizcaino, 290 F.3d at 1050; Fleming, 2022 WL 2789496 at *8-9.

While the ultimate determination of the appropriate amount of attorneys' fees to be awarded rests within the sound discretion of the Court, see Rodriguez v. Disner, 688 F.3d at 653, "[t]his circuit has established 25% of the common fund as a benchmark award for attorney fees." Staton v. Boeing Co., 327 F.3d 938, 968 (9th Cir. 2003); see also In re Hyundai & Kia Fuel Econ. Litig., 926 F.3d 539, 570 (9th Cir. 2019) (reaffirming 25% benchmark). The benchmark is a starting point, as "the district court should be guided by the fundamental principle that fee awards out of common funds be reasonable under the circumstances." WPPSS, 19 F.3d at 1296.

Here, Plaintiffs' Counsel's efforts have resulted in the creation of an $17.5 million common fund for the benefit of the Settlement Class. Under Ninth Circuit law, the percentage-of-the-fund method should be used to determine the reasonableness of Plaintiffs' Counsel's fee request here. But regardless of which test is applied—percentage-of-the-fund or lodestar cross-check—the requested fee of 25% of the Settlement Fund is entirely reasonable. As detailed below, paying Plaintiffs' Counsel's reasonable fee request from that common fund properly compensates counsel for bringing and pursuing the claims against Defendants and furthers an

[8] Within the Ninth Circuit, the percentage-of-the-fund method is interchangeably referred to as the "percentage-of-recovery" method. Compare In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d 935, 942 (9th Cir. 2011) (citing "percentage-of-recovery" method), with Vizcaino, 290 F.3d at 1047 (citing "percentage-of-the-fund" method).

essential purpose of the federal securities laws.[9]

1. The Vizcaino Factors Confirm that the Requested 25% Fee is Fair and Reasonable

In Vizcaino, the Ninth Circuit set forth the following criteria for courts in this Circuit to consider when analyzing fee applications in a common fund case: (i) the results achieved; (ii) the risk of litigation; (iii) the skill required and the quality of the work; (iv) awards made in similar cases; (v) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (vi) whether the percentage appears reasonable in light of a lodestar cross-check. 290 F.3d at 1048-50; see also In re Capacitors Antitrust Litig., No. 3:14-CV-03264-JD, 2018 WL 4790575, at *3 (N.D. Cal. Sept. 21, 2018) (citing Vizcaino factors). The Ninth Circuit has explained that these factors should not be used as a rigid checklist or weighed individually, but rather should be evaluated in light of the totality of the circumstances. Vizcaino, 290 F.3d at 1048-50. In addition, although not articulated specifically in Vizcaino, district courts in the Ninth Circuit also consider the reaction of the class when deciding whether to award the requested fee. See, e.g., Cortez v. United Nat. Foods, Inc., No. 18-CV-04603-BLF, 2020 WL 13526688, at *12 (N.D. Cal. Feb. 6, 2020).

As discussed below, each of these factors supports approval of the requested award of attorneys' fees here.

a) Lead Counsel Obtained a Favorable Result for the Settlement Class

The first factor to consider in determining what fee to award is a consideration of the results achieved for the settlement class. See Vizcaino, 209 F.3d at 1048; see also Hensley v. Eckerhart, 461 U.S. 424, 436 (1983) ("the most critical factor [in determining an attorneys' fee] is the degree of success obtained"); Hefler v. Wells Fargo & Co., No. 16-CV-05479-JST,

[9]As the Court's Standing Order for Civil Cases Before Judge Vince Chhabria ("Standing Order") requires (¶57), the proposed order will reflect a suggested holdback. Barenbaum Decl. ¶93. Lead Counsel suggests that 10% is a reasonable percentage of awarded fees to hold-back until after the Net Settlement Fund is distributed and the Post-Distribution Accounting has been filed, given Plaintiffs' Counsel's commitment to litigating this highly complex action on behalf of the Settlement Class for two-plus years without receiving any compensation for Plaintiffs' Counsel's efforts.

2018 WL 6619983, at *13 (N.D. Cal. Dec. 18, 2018), aff'd sub nom. Hefler v. Pekoc, 802 F. App'x 285 (9th Cir. 2020) (same). The excellent recovery achieved in this action—$17.5 million cash—is a highly favorable result that will provide the Settlement Class with an immediate and certain benefit. While the aggregate maximum possible damages in this action are $301.1 million (based on consultation with Plaintiffs' damages consultant), that assumes (1) that 100% of the drop is related to the fraud and (2) that none of Defendants' litany of defenses and challenges to the factual and legal positions taken by Plaintiffs prevail, which, as discussed within this memorandum, is are a significant risk. Final Approval Motion § III.A.1.d.; Barenbaum Decl. ¶¶52-53. And as discussed in Section II.A.1.b., infra, Defendants strenuously asserted, and would continue to assert, that no (or far fewer) damages could be proven at trial. There was a real chance that, were Defendants to prevail on just some of their arguments, the ultimate recovery, potentially after years of litigation and appeals, would be much less than those maximum damages and potentially less than the $17.5 million result achieved here, if not zero. Final Approval Motion §§ III.A.1.a.-c.; Barenbaum Decl. ¶¶10, 54-67. Nonetheless, even with those hypothetical maximum damages of $301.1 million, the $17.5 million recovery here constitutes a recovery of approximately 5.8%. Final Approval Motion §§ III.A.1. & III.A.1.d.; Barenbaum Decl. ¶53.

This recovery is in line with recent comparable securities class action settlements and is within the range of recoveries found reasonable by courts in this Circuit and others. See, e.g., Vataj v. Johnson, No. 19-cv-06996-HSG, 2021 WL 1550478, at *9 (N.D. Cal. Apr. 20, 2021) (2% of estimated damages); SEB Inv. Mgmt. AB v. Align Tech., Inc., No. 3:18-cv-06720 (N.D. Cal. April 28, 2022), ECF No. 215 (Chhabria, J.) (3.3% to 9.1% of likely recoverable damages); In re Extreme Networks, Inc. Sec. Litig., No. 15-cv-04883-BLF, 2019 WL 3290770, at *9 (N.D. Cal. July 22, 2019) (5% to 9.5% of "maximum potential damages").[10] In addition, though "the very essence of a settlement is compromise, a yielding of absolutes," Joh v. Am. Income Life

[10] See also Schuler v. Medicines Co., No. CV 14-1149 (CCC), 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (4% of estimated recoverable damages); Azar v. Blount Int'l, Inc., No. 3:16-cv-0483, 2019 WL 7372658, at *7 (D. Or. Dec. 31, 2019) (4.63% to 7.65% of total estimated damages).

Ins. Co., No. 18-CV-06364-TSH, 2020 WL 109067, at *8 (N.D. Cal. Jan. 9, 2020) (quoting Linney v. Cellular Alaska P'ship, 151 F.3d 1234, 1242 (9th Cir. 1998)), the $17.5 million Settlement also compares favorably as an absolute value. The $17.5 million provided by the Settlement will give Settlement Class Members immediate compensation for their losses and avoid the substantial risks of no recovery had the litigation proceeded and the Court granted Defendants' anticipated motion for summary judgment, or had Defendants later won at trial or on subsequent appeal. Barenbaum Decl. ¶¶49; Final Approval Motion § III.A.1. In light of these circumstances, the results achieved here on behalf of the Settlement Class weigh in favor of granting the 25% fee.

b) The Litigation Risks Support the Requested Fee

The second factor to consider in determining what fee to award is a consideration of the litigation risks. See Vizcaino, 209 F.3d at 1048-49; Hefler, 2018 WL 6619983, at *13.

The multitude of risks at issue in this litigation support both the $17.5 million Settlement amount and the requested 25% fee. "The risk that further litigation might result in [p]laintiffs not recovering at all, particularly [in] a case involving complicated legal issues, is a significant factor in the award of fees." In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig., No. 4:14-MD-2541-CW, 2017 WL 6040065, at *3 (N.D. Cal. Dec. 6, 2017) ("NCAA"), aff'd, 768 F. App'x 651 (9th Cir. 2019). The risk of litigation is particularly relevant in securities class actions, which "are often long, hard-fought, complicated, and extremely difficult to win." Extreme Networks, 2019 WL 3290770, at *8. Indeed, there are "inherent uncertainties of trying securities fraud cases…." Hefler, 2018 WL 6619983, at *13. The risks here were substantial, and Plaintiffs' Counsel's efforts were critical to achieving this excellent result.

Although Plaintiffs' Counsel, consultants, and experts worked diligently and succeeded in developing a compelling case sufficient to influence the Defendants' decision to resolve the case at this level, Plaintiffs' Counsel and Plaintiffs recognize that there were significant uncertainties and risks concerning proof of liability and damages and, particularly in a complex case such as this, that continued litigation would lead to a smaller recovery, or worse, no

recovery at all.[11] Defendants would have asserted a host of arguments and defenses in their motions to dismiss and briefs in opposition to class certification, as well as throughout the discovery process, the success of just one of which could have defeated Plaintiffs' case or catastrophically reduced damages. See Barenbaum Decl. ¶¶10, 55-60. There can be no question that these substantial risks associated with continuing litigation clearly weigh in favor of not just this $17.5 million Settlement, but the 25% fee ($4,375,000) requested here as well.

Defendants challenge liability in multiple ways. For example, Defendants would argue that they made no actionable misrepresentations or omissions by arguing, inter alia, that: (a) the scope of the case was confined to limited modest sales in 2018 (and not the more robust sales in 2019) ; (b) the return reserves and GAAP compliance with were not material to Plaintiffs' investment managers' and Settlement Class Members' investment decisions; (c) alternative immaterial factors caused the 2018 end-of-year return reserve balance to drop by 90% to $299,000, and thus there was no actionable omission in the 2018 Form 10-K; (d) despite raising ASC 606 and revenue recognition as "Critical Audit Matters," Portola's auditor, Ernst & Young ("E&Y"), provided a clean audit opinion upon which Defendants relied and did not require a restatement, thus bolstering the validity of Defendants' reporting and statements; and (e) Defendants' decisions and statements about both demand and returns and reserves good faith non-actionable opinions. Barenbaum Decl. ¶57; Final Approval Motion at § III.A.1.a.

Defendants would also challenge that they acted with the requisite scienter by arguing, inter alia, that (a) the evidence would not support a finding that defendants knew that their return reserves did not comply with GAAP, particularly given E&Y's audit opinion; (b) alternative factors caused the 2018 end-of-year return reserve balance to drop by 90% to $299,000, knowledge of that drop and the small year-end remainder in the 2018 reserve account does not support an inference of scienter; and (c) there are no other common indicia of scienter, such as a restatement or U.S. Securities and Exchange Commission action or investigation. Barenbaum

[11] Lead Plaintiff discussed the strengths of the case balanced against the substantial risks of continued litigation at length in the Preliminary Approval Motion (at 9-15) as well as in the Final Approval Motion (at §§ III.A.1.a.-c.**)** and Barenbaum Declaration (¶¶10, 54-67). A summary of that discussion is presented here.

Decl. ¶58; Final Approval Motion § III.A.1.a.

Plaintiffs also face several risks to establishing loss causation and damages. Defendants would challenge (and have challenged) loss causation and the scope of damages recoverable in this case by arguing, inter alia, that (a) the February 26, 2020 corrective disclosure was primarily about Bevyxxa and not Andexxa; (b) the corrective disclosures and their resulting stock drops stem from a change in circumstances for Portola's Andexxa sales, and not misstatements or omissions about GAAP / ASC 606, return reserves, or demand and utilization; (c) Plaintiffs' damages expert must disaggregate (what they argue are) two competing liability theories—one related to accounting fraud and revenue recognition, and the other about unfounded claims of high "demand and utilization"—which Defendants claim is untenable (and at a minimum would significantly cut damages); (d) since (Defendants' assert) "demand and utilization" claims were dismissed, so too were the January 9 and February 26, 2020 corrective disclosures originally associated with those claims, leaving just the February 28, 2022 disclosure and the relatively minor stock-price drop associated with it; and (e) Plaintiffs and the Settlement Class were not damaged because (Defendants argue) there was no actionable misrepresentation or omission or scienter, as detailed supra at 9-11. Barenbaum Decl. ¶59; Final Approval Motion § III.A.1.a.

Moreover, Defendants vigorously contested litigation class certification, which had been fully briefed at the time of Settlement, but not yet argued or submitted. First, Defendants argue that individual issues predominate and defeat the class predominance requirement of Rule 23(b)(3), where they assert that: (1) Plaintiffs failed to offer a class-wide damages methodology, (2) there are price impact rebuttals for three of the four corrective disclosure dates alleged in the operative complaint, and (3) there are individualized issues that defeat OFPRS' standing to assert Securities Act claims for the August 2019 Secondary Public Offering. Barenbaum Decl. ¶60; Final Approval Motion § III.A.1.c. Second, Defendants argue that there are problems with the adequacy and typicality requirements for class certification under Rule 23(a), where (they assert that): there are individualized rebuttals to issues of reliance and OFPRS' Securities Act standing: (1) the fraud-on-the-market doctrine is inapplicable here because (Defendants suggest) Plaintiffs and their outside investment managers did not rely on

the integrity of the market nor the public misstatements / omissions that Plaintiffs allege are at the heart of the GAAP / ASC 606 claims, and (2) OFPRS does not have standing to assert Securities Act claims for shares that it purchased in the Secondary Public Offering because, they argue, Plaintiffs have not adequately demonstrated through tracing that the shares were purchased in the offering. Barenbaum Decl. ¶60; Final Approval Motion § III.A.1.c.[12]

Even if the Plaintiffs were to succeed in certifying a litigation class, the complexity and likely duration of summary judgment, trial, and appeals when balanced against the uncertainty of the amount of recovery, or of obtaining no recovery at all, further supports the requested 25% fee in this common fund case. Win or lose down the line, the litigation would likely have potentially continued for years after trial without any payment to the Class due to post-trial appeals. See, e.g., Rodriguez v. West Publ'g Corp., 563 F.3d at 966 ("Inevitable appeals would likely prolong the litigation, and any recovery by class members, for years. This factor, too, favors the settlement."); see also Final Approval Motion § III.A.1.b. And even assuming a successful appeal, Settlement Class Members would have likely faced a complex, lengthy, and contested claims administration process to recover their individual awards.

Without settlement, resolution of this action would unquestionably entail considerable time, expense, and uncertainty, making the present value of a certain and substantial recovery far preferable to the mere chance of a greater recovery in the distant future (with the real possibility of a smaller one or none at all). Barenbaum Decl. ¶¶10, 62-67; Final Approval Motion § III.A.1.b. Indeed, that Plaintiffs' Counsel would obtain a negative multiplier on the lodestar recorded demonstrates suggests "that the percentage-based amount is reasonable and fair." See, e.g., In re Portal Software, Inc. Sec. Litig., No. C-03-5138 VRW, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) ("negative multiplier suggests that the percentage-based amount is reasonable and fair"); In re Amgen Inc. Sec. Litig., No. CV 7-2536 PSG (PLAX), 2016 WL

[12] Beyond that, if a litigation class was certified, there is a further risk of decertification at a later time. See Fed. R. Civ. P. 23(c)(1)(C); Rodriguez v. West Publ'g Corp., 563 F.3d 948, 966 (9th Cir. 2009) ("A district court may decertify a class at any time."); In re Omnivision Techs., Inc., 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008) ("[T]here is no guarantee the certification would survive through trial….").

10571773, at *9 (C.D. Cal. Oct. 25, 2016) (same).

These many risks were substantial, and Plaintiffs' Counsel's efforts were robust and critical in achieving the Settlement that was ultimately agreed to. These risks fully support the requested 25% fee.

c) Lead Counsel Provided Quality Representation

The third factor to consider in determining what fee to award is the skill required and quality of work performed. See Vizcaino, 209 F.3d at 1049; Larsen v. Trader Joe's Co., No. 11-CV-05188-WHO, 2014 WL 3404531, at *9 (N.D. Cal. July 11, 2014). "[T]he prosecution and management of a complex national class action requires unique legal skills and abilities." Destefano v. Zynga, Inc., No. 12-CV-04007-JSC, 2016 WL 537946, at *17 (N.D. Cal. Feb. 11, 2016). From the outset, Plaintiffs' Counsel engaged in a prolonged and strategic effort to obtain the maximum recovery for the Settlement Class. The quality of the representation that Plaintiffs' Counsel provided—evidenced by, inter alia, work in support of the theories alleged in the operative complaint (including a new, novel theory alleging misrepresentation of revenue recognition under GAAP and newly-enacted ASC 606), the outcomes of various motions argued, and the ultimate result achieved—supports the reasonableness of the requested fee.

Plaintiffs' Counsel are both national law firms with extensive experience representing investors in complex securities class actions. See Barenbaum Decl. ¶¶96-98 & **Exs. 4** & **6** (Lead Plaintiff); **Ex. 7** (Kaplan Decl.) ¶2 (OFPRS). Plaintiffs' Counsel's experience and skill were demonstrated by the zealous and effective prosecution of this action, including the efforts discussed in Section I, supra, and the Barenbaum Declaration (¶¶6-11, 26-48, 54-67). Indeed, this Court has already recognized Lead Counsel's qualifications and skills (in April 2020 when it appointed Berman Tabacco as Lead Counsel (ECF No. 49)), and that "the Settlement appears to fall within the range of possible approval and is therefore sufficiently fair, reasonable, and adequate to warrant providing notice...." (Preliminary Approval Order 2).

The quality of opposing counsel is also important in evaluating the quality of Plaintiffs' Counsel's work. See Zepeda v. PayPal, Inc., No. C 10-1668 SBA, 2017 WL 1113293, at *20

(N.D. Cal. Mar. 24, 2017) ("Given the contentious nature of the action, the Court finds that the result achieved in this matter would have been unlikely if entrusted to counsel of lesser experience or capability."). Plaintiffs' Counsel were opposed in this action by highly skilled and nationally respected law firms in the area of securities litigation—Paul, Weiss, Rifkind, Wharton & Garrison LLP on behalf of the Portola Defendants and Morrison & Foerster LLP on behalf of the Underwriter Defendants, both of which provided vigorous opposition. Barenbaum Decl. ¶99. Defendants' Counsel in this matter were formidable opponents who mounted strong and aggressive defenses on behalf of their clients. Id.; see also Weeks v. Google LLC, No. 5:18-CV-00801-NC, 2019 WL 8135563, at *3 (N.D. Cal. Dec. 13, 2019) (noting that opposing counsel was "skilled and respected . . . resulting in substantial and difficult litigation … [that] justif[ied] an upward departure from the 25% benchmark"). To combat such opponents, Plaintiffs' Counsel was required to litigate at a very high level of skill, efficiency, and professionalism at every stage of the proceedings. See Barenbaum Decl. ¶99.

In the face of that, and despite the litany of litigation risks identified in Section II.A.1.b., supra, Plaintiffs' Counsel were able to develop the case so as to persuade Defendants to settle this action on terms favorable to the Settlement Class. See Barenbaum Decl. ¶49.

d) The Fee is Within the Customary Range of Fees in Similar Actions

The fourth factor to consider in determining what fee to award is consideration of awards made in similar cases. See Vizcaino, 209 F.3d at 1049; Capacitors Antitrust Litig., 2017 WL 9613950, at *5.

The Ninth Circuit has set a fee "benchmark" of 25% of the recovery obtained in common fund cases. Vizcaino, 290 F.3d at 1047; Bluetooth, 654 F.3d at 942 "[O]ther courts … have concluded that a 25 percent award was appropriate in complex securities class actions…. Indeed, in many securities class actions, the award has exceeded the 25 percent benchmark." Zynga, 2016 WL 537946, at *18; see, e.g., In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming a fee award of 33.33%); Omnivision, 559 F. Supp. 2d at 1046–48

(approving 28% fee award); Ching v. Siemens Indus., Inc., No. 11-cv-04838-MEJ, 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014) (approving 30% fee); Trader Joe's Co., 2014 WL 3404531, at *8-9 (approving 28% fee); In re Nuvelo, Inc. Sec. Litig., No. C 07-04056 CRB, 2011 WL 2650592, at *3 (N.D. Cal. July 6, 2011) (approving 30% fee); CV Therapeutics, No. C 03-3709 SI, 2007 WL 1033478, at *1 (N.D. Cal. Apr. 4, 2007) (same). Lead Counsel's requested 25% fee is also consistent with a recent study from NERA Economic Consulting, which found that the median attorneys' fees award in securities class action cases with a settlement value of $10 million to $25 million was 27.5%—above the Ninth Circuit's 25% benchmark rate. See **Ex. 10**.

Accordingly, Plaintiffs' Counsel's fee request of $4,375,000, or 25% of the Settlement Fund, is consistent with fee awards granted in similar actions in the Ninth Circuit and Northern District of California and is warranted under the facts and circumstances of this case.

e) The Contingent Nature of the Case and Financial Burden Carried by Plaintiffs' Counsel

The fifth factor to consider in determining what fee to award is the contingent nature of the litigation and the financial burdens caried by Plaintiffs' Counsel. See Vizcaino, 209 F.3d at 1050; Capacitors, 2017 WL 9613950, at *5.

The contingency risk here was very significant and fully supports the requested fee. Plaintiffs' Counsel undertook this action on a strictly contingent basis and prosecuted the claims with no guarantee of compensation or recovery of any litigation expenses. While Lead Counsel ultimately seek fees that represent a negative multiplier on Plaintiffs' Counsel's lodestar—i.e., a discount on fees—the Ninth Circuit recognizes the public interest in awarding just the opposite with complex contingent ligation—an enhancement. See, e.g., NCAA, 2017 WL 6040065, at *4 ("Courts have long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work."). In addition to the risks associated with complex litigation, "[t]he risk that further litigation might result in [p]laintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in

the award of fees." Omnivision, 559 F. Supp. 2d at 1046–47; Deaver v. Compass Bank, No. 13-CV-00222-JSC, 2015 WL 8526982, at *11 (N.D. Cal. Dec. 11, 2015) ("[W]hen counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award.").

Courts in this Circuit have found that "the importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee." Omnivision, 559 F. Supp. 2d at 1047; see also WPPSS, 19 F.3d at 1299 ("It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases.").[13]

When Plaintiffs' Counsel undertook representation of Plaintiffs in this action, they were aware that litigation of a complex securities class action such as this posed a significant risk of nonpayment after many years of litigation. See Barenbaum Decl. ¶104; see also id. ¶¶10, 54-67. Despite this risk, Plaintiffs' Counsel prosecuted this action on a fully contingent fee basis and has not received any compensation for their services or reimbursement for the hundreds of thousands of dollars in expenses they have incurred over the past two-plus years. Id. In order to reach the Settlement for the benefit of the Settlement Class, Plaintiffs' Counsel had to work thoroughly and diligently, investing a significant amount of time, energy, and resources (both human and monetary) into the litigation. Through these efforts, Plaintiffs' Counsel have incurred 15,431.45 hours of attorney and staff time and $750,612.54 in expenses without reimbursement from the inception of this case through January 17, 2023. See id. ¶¶92, 104, 107, 109, 114. These hours do not include time spent on the final approval of fee motions and do not include additional time that will be spent by Lead Counsel administering the Settlement through distribution. Id. ¶92. This type of "substantial outlay, when there is a risk that [no money] will

[13] Representation for securities class actions is critical. The Supreme Court has emphasized that private securities class actions, such as this, provide "a most effective weapon in the enforcement of the securities laws…." Bateman Eichler, Hill Richards, Inc. v. Berner, 472 U.S. 299, 310 (1985); Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 313 (2007) (same).

be recovered, further supports the award of the requested fees." Omnivision, 559 F. Supp. 2d at 1047.

In addition to the time and expense incurred during the litigation of this action, the fact that the lawyers working on this action have foregone the business opportunity to devote time to other cases supports the reasonableness of the requested fee. See Vizcaino 290 F.3d at 1050 (considering opportunity cost); Trader Joe's Co., 2014 WL 3404531, at *9 (finding the request of 28% of the settlement fund reasonable and supported by the fact that "plaintiffs' counsel took this case on a contingent fee basis and had to forego other financial opportunities to litigate it"). Such is the case here for Plaintiffs' Counsel.

In light of the above, the contingent nature of the case strongly supports the fee requested here.

f) The Lodestar Cross-Check Supports the Requested Fee

An additional factor to consider in determining what fee to award is an application of the lodestar cross-check to the fee requested. See Vizcaino, 209 F.3d at 1050-51 ("Calculation of the lodestar … provides a check on the reasonableness of the percentage award.").

Although an analysis of counsel's lodestar is not required for an award of attorneys' fees in the Ninth Circuit, a cross-check of the fee requested in this motion against Plaintiffs' Counsel's lodestar incurred in this action demonstrates the request's reasonableness. Vizcaino, 209 F.3d at 1050-51.[14] Such a lodestar cross-check is favored in the Northern District. The N.D. Cal. Guidance states that "[a]ll requests for approval of attorneys' fees must include detailed lodestar information, even if the requested amount is based on a percentage of the settlement fund" and that "the number of hours spent on various categories of activities related to the action by each biller, together with hourly billing rate information may be sufficient." Plaintiffs Counsels' lodestar will "ensure the reasonableness of the [percentage] award." Bellinghausen v. Tractor Supply Co., 306 F.R.D. 245, 260 (N.D. Cal. 2015); see also Vizcaino, 209 F.3d at 1050. "Where, as here, the lodestar is being used as a cross-check, courts may do a rough calculation

[14] "The lodestar is calculated by multiplying the number of hours . . . reasonably expended on the litigation by a reasonable hourly rate." Zynga, 2016 WL 537946, at *18.

with a less exhaustive cataloging and review of counsel's hours." Lesevic v. Spectraforce Techs., Inc., No. 19-CV-03126-LHK, 2021 WL 1599310, at *3 (N.D. Cal. Apr. 23, 2021).

Here, Plaintiffs' Counsel has devoted a significant amount of time to the prosecution of this case to protect the interests of the Class. See Barenbaum Decl. ¶95. The Barenbaum Declaration contains the lodestar calculation for both Lead Counsel and OFPRS' Counsel by timekeeper (both in aggregate and by task category). See Barenbaum Decl. ¶¶92, 102-03 & **Exs. 1** & **2**; **Ex. 7** (Kaplan Decl.) ¶¶5-8 & Exs. A & B, thereto. (The Barenbaum Declaration also narratively details the efforts of Counsel throughout the litigation. Barenbaum Decl. ¶¶9, 23-48.) Collectively, Plaintiffs' Counsel have devoted 15,431.45 hours of attorney and professional support time in the prosecution of the action (Lead Counsel has expended 13,310.70 hours and OFPRS' Counsel has expended 2,120.75 hours. Id. ¶92. These hours have been multiplied by the firm's recent 2022 hourly rates[15] for the attorneys and professional support staff who worked on the action to arrive at the lodestar amount of $9,653,350.25. Id.[16] Counsel's rates range from $775.00 to $1,065.00 for partners, from $830.00 to $890.00 for of counsel, and from $400.00 to $680.00 for other attorneys, including staff attorneys. See Barenbaum Decl. ¶102 & **Ex. 1** & **2**; **Ex. 7** (Kaplan Decl.) ¶5 & Exs. A & B, thereto. The hourly rates for attorneys and professional support staff in my firm have been accepted by courts in other complex class actions. See, e.g., In re Aqua Metals, Inc. Sec. Litig., No. 4:17-cv-07142-HSG, slip op. at 13-14 (N.D. Cal. Mar. 2, 2022), ECF No. 182; In re Lithium Ion Batteries

[15] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. See Mo. v. Jenkins by Agyei, 491 U.S. 274, 283-84 (1989); Kelly v. Wengler, 822 F.3d 1085, 1099 (9th Cir. 2016) ("[a] reasonable hourly rate is ordinarily the prevailing market rate … in the relevant community"); Patel v. Trans Union, LLC, No. 14-CV-00522-LB, 2018 WL 1258194, at *7 (N.D. Cal. Mar. 11, 2018) (San Francisco market rates were "appropriate given the deferred and contingent nature of counsel's compensation."). The Barenbaum Declaration includes, as exhibits thereto, firm biographies that support the hourly rates submitted, describing the legal background and experience of Berman Tabacco and Saxena White. See Barenbaum Decl. **Exs. 4** & **6**, respectively. Here, the billing rates used are reasonable for complex securities litigation and consistent with market rates accepted by courts. Barenbaum Decl. ¶103; Kaplan Decl. ¶6.

[16] The lodestar reported here does not include work that Lead Counsel expended on this Fee and Expense Motion, nor does it include future work that Lead Counsel will continue to perform on behalf of the Settlement Class (should the Court approves the Settlement), including working with the Claims Administrator throughout the claims administration process.

Antitrust Litig., No. 13-MD-02420-YGR, 2018 WL 3064391, at *1 (N.D. Cal. May 16, 2018); Koch v. Healthcare Servs. Grp., Inc., et al., No. 2:19-CV-01227-ER, slip op. at 30-31 (E.D. Pa. Jan. 12, 2022), ECF No. 83; Okla. Police Pension & Ret. Sys. v. Sterling Bancorp, Inc, et al., No. 5:20-CV-10490-JEL-EAS, slip op. at 3-4 (E.D. Mich. Sept. 23, 2021), ECF No. 98; In re GSE Bonds Antitrust Litig., No. 19-CV-1704 (JSR), 2020 WL 3250593, at *4-5 (S.D.N.Y. June 16, 2020); In re Alphabet Inc. S'holder Deriv. Litig., No. 19CV341522, slip op. at 3-4 (Cal. Super. Ct. Santa Clara Cty. Feb. 5, 2021).

Plaintiffs' Counsel's lodestar represents more than double the requested fee award and results in a significant negative "multiplier" of less than 0.5. Barenbaum Decl. ¶¶13, 94. "Courts have held [a negative multiplier] suggests that the percentage-based amount is reasonable and fair based on the time and effort expended by class counsel." O'Connor v. Uber Techs., Inc., No. 13-CV-03826-EMC, 2019 WL 1437101, at *14 (N.D. Cal. Mar. 29, 2019); Amgen, 2016 WL 10571773, at *9 (same). Moreover, a negative multiplier, like the negative multiplier here, means that Plaintiffs' Counsel is seeking to be paid "for only a portion of the hours that they expended on the action." Id. at *9.

Therefore, the cross-check with Plaintiffs' Counsel's lodestar confirms that the request for $4,375,000 (25% of the Settlement Fund) is "presumptively" fair and reasonable.

2. Reaction of Class Members to Date Supports the Fee Request

Although not articulated specifically in Vizcaino, district courts in the Ninth Circuit also consider the "reaction of the class [when] … determining the fee award." Cortez, 2020 WL 13526688, at *12.

Here, the reaction of the Settlement Class to date also supports the requested fee. In accordance with the Court's Preliminary Approval Order, a total of 44,005 copies of Notice Packets were mailed to potential Class Members by the Claims Administrator appointed by this Court, Epiq. **Ex. 9** (Blow Notice Decl.) ¶10; Barenbaum Decl. ¶¶74-75. The Summary Notice was published in Investor's Business Daily/Weekly and transmitted over the PR Newswire on November 21, 2022; it was also published on the Settlement website, www.PortolaSecuritiesLitigation.com. **Ex. 9** (Blow Notice Decl.) ¶12; Barenbaum Decl. ¶71. In

addition, Lead Counsel has provided a link to www.PortolaSecuritiesLitigation.com on its website.[17] Barenbaum Decl. ¶73. Among other things, the Notice described the action and the proposed Settlement, as well as Plaintiffs' Counsel's intent to request an award of attorneys' fees of no more than 25% (or $4,375,000) of the Settlement Fund, plus interest, and litigation expenses not to exceed $840,000, plus interest. Barenbaum Decl. ¶¶105, 115.

ACERA and OFPRS—not only Settlement Class Members, but also sophisticated institutional investors that manage billions in assets for public employees—support the fee and expense requests. **Ex. 5** (Weiss Decl.) ¶¶1, 6-8 (ACERA); **Ex. 8** (Rankin Decl.) ¶¶1, 10-12 (OFPRS); Barenbaum Decl. ¶¶106, 115. They were substantially involved in the prosecution of the action and had direct and regular involvement from its commencement through mediation and achieving the Settlement. Further, while the deadline to object or seek exclusion from the Settlement Class has not yet passed,[18] to date there have been no objections made by absent Settlement Class Members as to the amount of attorneys' fees requested or reimbursement of expenses. Barenbaum Decl. ¶77; **Ex. 9** (Blow Notice Decl.) ¶¶15-18.

Thus, at this time, this factor supports granting the motion. See Ching, 2014 WL 2926210, at *8 (finding that "the lack of objection from the class after notice further demonstrates the reasonableness and fairness of Class Counsels' fee request").

For these reasons, Lead Counsel respectfully submits that the fee requests are fair and reasonable and should be granted in full.

B. The Litigation Expenses Are Reasonable and Should be Reimbursed

Plaintiffs' Counsel also respectfully request the reimbursement of $750,612.54 plus accrued interest in litigation expenses that Plaintiffs' Counsel advanced in connection with the prosecution and resolution of this action.

[17] See https://www.bermantabacco.com/case/portola-pharmaceuticals-inc-securities-litigation/.

[18] The deadline for Settlement Class members to object to the Settlement and/or Lead Counsel's fee application or seek exclusion from the Settlement Class is February 9, 2023, so that members of the Settlement Class have 14 days to review this fee application and consider the merits of the settlement. See In re Mercury Interactive Corp. Sec. Litig., 618 F.3d 988 (9th Cir. 2010) (requiring that fee motion be made available to the settlement class before the deadline for objecting to the fee); see also Standing Order at 16 ("the parties must ensure that the motion for attorneys' fees is filed at least 14 days before the deadline for objecting to the settlement").

"There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation expenses from that fund." Chen v. Chase Bank USA, N.A., No. 19-CV-01082-JSC, 2020 WL 3432644, at *11 (N.D. Cal. June 23, 2020). The appropriate analysis to apply in deciding whether expenses are compensable in a common fund case is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. See Baird v. BlackRock Institutional Tr. Co., N.A., No. 17-CV-01892-HSG, 2021 WL 5113030, at *7 (N.D. Cal. Nov. 3, 2021) ("Class Counsel is … entitled to recover 'those out-of-pocket expenses that would normally be charged to a fee paying client.'") (quoting Harris v. Marhoefer, 24 F.3d 16, 19 (9th Cir. 1994)). "To that end, courts throughout the Ninth Circuit regularly award litigation costs and expenses—including photocopying, printing, postage, court costs, research on online databases, experts and consultants, and reasonable travel expenses—in securities class actions, as attorneys routinely bill private clients for such expenses in non-contingent litigation." Zynga, 2016 WL 537946, at *22; see also Rieckborn v. Velti PLC, No. 13-CV-03889-WHO, 2015 WL 468329, at *22 (N.D. Cal. Feb. 3, 2015) (approving expenses primarily for "experts, consultants, and investigators" and "computerized factual and legal research and … travel expenses"). Courts often award interest on expense requests as well. See, e.g., In re SanDisk LLC Sec. Litig., No. 15-cv-01455-VC, slip op. at ¶3 (N.D. Cal. Oct. 23, 2019), ECF No. 284 (Chhabria, J.) (awarding payment of litigation expenses in the amount of $885,149.36, plus interest); In re Vocera Commc'ns, Inc. Sec. Litig., No. 3:13-cv-03567 EMC, 2016 WL 8201593, at *1 (N.D. Cal. July 29, 2016) (awarding expenses plus interest "at the same rate earned by the Settlement Fund").

Plaintiffs' Counsel's expenses, which are summarized by detailed by category and summary chart in the Barenbaum and Kaplan Declarations, were reasonably necessary for the prosecution of this action and may be properly recovered by counsel. Barenbaum Decl. ¶¶107-14 & **Ex. 3**; **Ex. 7** (Kaplan Decl.) ¶¶11-12 & Ex. C, thereto. These expenses include consultant/expert fees and expenses, online factual and legal research expenses, mediation fees

and expenses, and limited travel, among others. Barenbaum Decl. ¶¶111-14.[19]

The reaction of the class to a proposed settlement and expense request is also a relevant factor in approving the requested reimbursement of expenses. See Omnivision, 559 F. Supp. 2d at 1048. The Notice to the Settlement Class advised that Lead Counsel would seek reimbursement of litigation expenses not to exceed $840,000, plus interest. Barenbaum Decl. ¶115. While the February 9, 2023 deadline to object or seek exclusion has not yet passed, to date there have been no objections to the fee and expense request. Id. ¶77; **Ex. 9** (Blow Notice Decl.) ¶¶15-18. ACERA and OFPRS, who are Settlement Class Members, support the expense requests. **Ex. 5** (Weiss Decl.) ¶¶7- 8 (ACERA); **Ex. 8** (Rankin Decl.) ¶¶11-12 (OFPRS).

Accordingly, reimbursement of Plaintiffs' Counsel's expenses of $750,612.54 should be approved as fair, reasonable, and appropriate.

C. Pursuant to the PSLRA, Plaintiffs ACERA and OFPRS Should Be Reimbursed for Reasonable Costs and Expenses

Finally, Lead Counsel also seeks reimbursement of an aggregate amount of $18,500 for some of the costs and expenses that were directly incurred by ACERA and OFPRS ($10,000 for ACERA and $8,500 for OFPRS) in connection with their representation of the Settlement Class in this action. Pursuant to the PSLRA, an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). These payments are designed to "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." Rodriguez v. West Publ'g Corp., 563 F.3d

[19] For example, the largest portion of Lead Counsel's expenses, $616,667.02, was for the services of experts and consultants, including, inter alia, Plaintiff's class certification expert; an accounting consultant who advised on the complaint allegations, motions to dismiss, and discovery; and a damages consultant who assisted, inter alia, with the investigation of the claims, mediation, and preparing the Plan of Allocation. See Barenbaum Decl. ¶113. The second largest expense was $43,986.58 for online research costs for legal research related to, inter alia, analyzing and bringing the claims, opposing Defendants' four motions to dismiss, filing Lead Plaintiff's Motion for Class Certification, addressing discovery concerns (e.g., preparing for meet-and-confer conferences and preparing detailed meet-and-confer correspondence and the Joint Discovery Letter submitted to Magistrate Judge Illman). See id.

at 958-59.[20] The N.D. Cal. Guidance states that "[a]ll requests for service awards must be supported by evidence of the value provided by the proposed awardees, the risks they undertook in participating, the time they spent on the litigation, and any other justifications for the awards."

The request here is only for the reimbursement of some of the time spent by Lead Plaintiff in connection with its service as the Court-appointed Lead Plaintiff and OFPRS as the additional named plaintiff in this action who purchased Portola common stock directly in the August 2019 Secondary Public Offering (and thus was arguably critical for asserting the Securities Act claim)—reimbursement of which is expressly permitted by the PSLRA. Barenbaum Decl. ¶116; **Ex. 5** (Weiss Decl.) ¶¶4, 9-10 (ACERA); **Ex. 8** (Rankin Decl.) ¶¶7-8, 13 (OFPRS). As set forth in the Weiss and Rankin Declarations, Plaintiffs took an active role in the leadership of this action and have been fully committed to pursuing this action as fiduciaries for the Class. Barenbaum Decl. ¶117; **Ex. 5** (Weiss Decl.) ¶¶3-4 (ACERA); **Ex. 8** (Rankin Decl.) ¶¶6-8 (OFPRS). Lead Plaintiff calculates that it spent well in excess of 100 hours in work directly related to the representation of the Settlement Class. See **Ex. 5** (Weiss Decl.) ¶9 (reporting on the calculation of a partial portion of the time spent on this matter, which calculated to 104.25 hours). OFPRS estimates that it spent 111.5 hours (**Ex. 8** (Rankin Decl.) ¶13) in work directly related to the representation of the Settlement Class. Barenbaum Decl. ¶118. Among the tasks Lead Plaintiff and OFPRS have performed in executing their duties and responsibilities in this action include: (a) reviewing the complaints, briefing, discovery, and mediation submissions; (b) managing the collection of discovery documents, participating in Rule 30(b)(6) deposition witness preparation, and attending those depositions; (c) communicating with their counsel via email and telephone about case developments and litigation strategy; (d) attending the lead plaintiff hearing, as well as hearings on the four motions to dismiss and the initial case management conference; (e) attending the mediation and evaluating the offers and counteroffers over several months of negotiations; and (f) evaluating the Settlement Amount, conferring with their counsel, and ultimately approving the Settlement.

[20] Congress acknowledged "that lead plaintiffs should be reimbursed for reasonable costs and expenses associated with service as lead plaintiff, including lost wages, and grants the courts discretion to award fees accordingly." H.R. Conf. Rep. No. 369, 104th Cong., 1st Sess. (1995).

Barenbaum Decl. ¶¶118; **Ex. 5** (Weiss Decl.) ¶4 (ACERA); **Ex. 8** (Rankin Decl.) ¶¶7-8 (OFPRS).

The requested Plaintiff award is warranted here, where Plaintiffs expended "significant time and effort on the litigation and face the risk of retaliation or other personal risks; where the [C]lass overall has greatly benefitted from [Plaintiffs'] efforts; and where the … awards represent an insignificant percentage of the overall recovery." In re Wells Fargo & Co. S'holder Derivative Litig., 445 F. Supp. 3d 508, 534 (N.D. Cal. 2020), aff'd, 845 F. App'x 563 (9th Cir. 2021). Plaintiffs also undertook risks pursuing these claims by lending their names to the lawsuit and opening themselves up to scrutiny and attention. See, e.g., Wehlage v. Evergreen at Arvin LLC, No. 4:10–cv–05839, 2012 WL 4755371, at *5 (N.D. Cal. Oct. 4, 2012) (finding award justified for plaintiffs "lending their names to this case, and thus subjecting themselves to public attention"); Hubbard v. RCM Techs. (USA), Inc., No. 19-cv-6363, 2021 WL 5016058, at *6 (N.D. Cal. Oct. 28, 2021) (noting "it is appropriate" to provide awards to "those who come forward with little to gain and at personal risk and who work to achieve a settlement that confers substantial benefits on others"). Similar requests for reimbursement of plaintiffs have been found to be presumptively reasonable in this Circuit. See, e.g., In re SanDisk LLC Sec. Litig., slip op. at ¶¶6-9, ECF No. 284 (order awarding attorneys' fees, payment of litigation expenses, and reimbursement of class representatives' costs and expenses of $7,300, $7,717.50, $7,474.44, and $8,557.50 to each class representative, respectively); Hatamian v. Advanced Micro Devices, Inc., No. 4:14-cv-00226-YGR, slip op. at 4 (N.D. Cal. Mar. 2, 2018), ECF No. 364 (awarding costs and expenses to two class representatives in the amount of $8,348.25 and $14,875.00, respectively); In re Broadcom Corp. Class Action Litig., No. 2:06-cv-05036-R-CW, slip op. at 2 (C.D. Cal. Dec. 4, 2012), ECF No. 454 (awarding costs and expenses to class representative in the amount of $21,087); Todd v. STAAR Surgical Co., No. CV-14-5263-MWF (GJSx), 2017 WL 4877417, at *6 (C.D. Cal. Oct. 24, 2017) ($10,000 reimbursement); In re Immune Response Sec. Litig., 497 F. Supp. 2d 1166, 1173-74 (S.D. Cal. 2007) ($40,000 reimbursement to lead plaintiff); see also Wilson v. LSB Indus., Inc., No. 1:15-CV-07614-RA-GWG, 2019 WL 3542844, at *2 (S.D.N.Y. June 28, 2019) (reimbursement of $18,850 to Lead Plaintiff).

Moreover, the Court-approved Notice advised potential Settlement Class members that, in addition to seeking fees and reimbursement of its own expenses, Lead Plaintiff may seek reimbursement of the Plaintiffs' costs and expenses in an amount not to exceed $20,000 in aggregate. See Barenbaum Decl. ¶122; **Ex. 9** (Blow Notice Decl.) Ex. A. To date, there have been no objections to a cost and expense reimbursement award to Plaintiffs. See Barenbaum Decl. ¶77; **Ex. 9** (Blow Notice Decl.) ¶18.

Accordingly, the $18,500 reimbursement requested here ($10,000 for ACERA and $8,500 for OFPRS) is reasonable and justified under the PSLRA based on Plaintiffs' prosecution of the Action and should be granted.

III. CONCLUSION

For the reasons stated above, Lead Counsel respectfully requests that the Court award (i) attorneys' fees of in the amount of 25% of the Settlement Fund, or $4,375,000, plus accrued interest; (ii) reimbursement of litigation expenses in the amount of $750,612.54 plus accrued interest; and (iii) an award to Plaintiffs for costs and expenses pursuant to 15 U.S.C. § 78u-4(a)(4) in the aggregate amount of $18,500 ($10,000 for ACERA and $8,500 for OFPRS).

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Respectfully submitted,

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